

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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DOCKET NO: 04-CV-40193

U.S. DISTRICT COURT
DISTRICT OF MASS.

JOAN L. SMITH,)
PLAINTIFF)
)
V.)
)
UNUM LIFE INSURANCE)
COMPANY OF AMERICA,)
DEFENDANT)

PLAINTIFF'S MOTION TO CONDUCT DISCOVERY

NOW COMES the Plaintiff, Joan L. Smith, and respectfully moves this Honorable Court for permission to conduct discovery upon the Defendant, Unum Life Insurance Company of America, and to request an evidentiary hearing.

I. FACTS OF THIS ACTION

This is an action brought by the Plaintiff, Joan L. Smith (hereinafter referred to as "Smith") against the Defendant, Unum Life Insurance Company of America (hereinafter referred to as "Unum") claiming that the Plaintiff is entitled to benefits under an employer policy of disability. The Plaintiff has sought the payment of long term disability benefits under said policy and her claim has been denied. The Plaintiff represented herself during the pendency of the claim on an administrative basis. The Plaintiff has not received disability benefits since approximately July 10, 2001. On May 28, 2004, Smith was notified that her final administrative review had been completed and that no further payments will be made.

The Plaintiff alleges that the review was not conducted in an appropriate manner. The Plaintiff had a spinal fusion operation and her physicians have indicated that she is totally and completely disabled. The Plaintiff previously was employed as a Registered Nurse and is currently unable to perform any work of that nature.

On August 24, 2004, the Plaintiff engaged Counsel to assist her in her claim for disability and the Defendant refused any further administrative review. This action was then brought in the United States District Court for the District of Massachusetts.

The Plaintiff has alleged in the Complaint Breach of Contract and requests as relief that the Court order payments under the policy and that she be awarded costs and reasonable attorney's fees. In the alternative, the Plaintiff has requested that the Court order the Defendant to receive current medical records and provide a fair determination as to payment of disability benefits for Smith. The Defendant has refused to examine current medical records claiming that the administrative review period is closed. It has been brought to the attention of Plaintiff and Plaintiff's Counsel that Unum has been the subject of disciplinary proceedings by the Massachusetts Insurance Commissioner and that Unum has been ordered to review previously denied disability claims on the grounds of wrongdoing.

The Defendant to date has refused to further review the claim after disciplinary proceedings by the Insurance Commissioner for the Commonwealth of Massachusetts.

II. REQUEST FOR DISCOVERY

The Plaintiff requests that this Court allow her to conduct discovery with the individual who handled her claim and thereafter denied her disability benefits and the principal individual who has most knowledge of her claim pursuant to Rule 30 (b)(6) of the Federal Rules of Civil Procedure, unless that person are one in the same. The Plaintiff requests that she be allowed to depose the person with most knowledge and/or who handled the claim for disability to determine how the review was conducted; what medical opinions other than those that appear in her medical record were reviewed by the Defendant; whether in house medical personnel of the Defendant reviewed the medical records and provided an opinion for the basis of the denial; and finally any administrative policy relative to back fusions that is in place by Unum.

The Defendant continues to object to any discovery and requests that the Court rule solely on the administrative record. In the ordinary claim for denial of disability benefits the administrative record is all that is presented to the Court and the Court rules whether there was an abuse of discretion of the part of the Defendant insurance carrier.

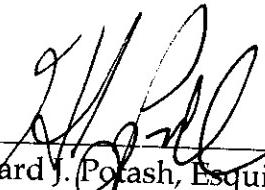
The Plaintiff believes in this case that further discovery is warranted and necessary as a result of the recent investigation against Unum by the Insurance Commissioner for wrongdoing and the denial of disability claims. The Plaintiff wishes to review and have available for the Court what actions were taken by the Defendant prior to the denial of Smith's disability benefits. The Plaintiff believes that the review was not appropriate. In addition, the Plaintiff has sought relief that this Court order, as an alternative, relief that Unum be ordered to conduct an additional administrative review. It appears that the Insurance Commissioner of Massachusetts has sought an additional review of disability claims and has disciplined Unum for not conducting appropriate review and denying disability claims.

III. REQUEST FOR EVIDENTIARY HEARING

The Plaintiff asserts that based upon additional discovery, it may be appropriate for an evidentiary hearing to be held in this matter beyond the administrative record. The Plaintiff further asserts that the administrative record was limited to the information that the Plaintiff was able to present on a Pro Se basis and believes that additional medical information and documentation would have been helpful in her claim. Counsel for the Plaintiff asserts that Unum took advantage of this Pro Se individual by limiting the amount of information available to Smith and not providing her with a full and fair administrative review as required by ERSA.

The Plaintiff in the interest of justice moves that this Honorable Court allow an additional evidentiary hearing, and the filing of a Motion for Judgment on behalf of the Plaintiff. The Plaintiff believes that the argument and review is limited solely to the administrative record and that the Plaintiff will be prejudiced and denied a full and fair hearing in this matter.

Respectfully submitted,
Joan L. Smith
By her Attorney,



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Dated: December 2, 2004

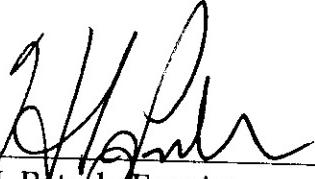
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CERTIFICATE OF SERVICE

I, Howard J. Potash, do hereby certify that on this 2nd day of December, 2004, I served a copy of the foregoing Motion to Conduct Discovery, upon Defendant's Counsel of Record: Geraldine G. Sanchez, Esquire, Pierce Atwood, LLP, One Monument Square, Portland, ME 04101.


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